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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GILBERTO DELGADO JR., Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

ALLBIRDS, INC., JOSEPH ZWILLINGER,
TIMOTHY BROWN, MICHAEL BUFANO,
NEIL BLUMENTHAL, DICK BOYCE,
MANDY FIELDS, NANCY GREEN, DAN
LEVITAN, and EMILY WEISS,

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff Gilberto Delgado Jr. ("Plaintiff"), individually and on behalf of all others
2 similarly situated, by and through Plaintiff's attorneys, alleges the following upon information
3 and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal
4 knowledge. Plaintiff's information and belief is based upon, *inter alia*, the investigation by
5 Plaintiff's counsel, which includes without limitation: (a) review and analysis of regulatory
6 filings made by Allbirds, Inc. ("Allbirds" or the "Company") with the United States ("U.S.")
7 Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and
8 media reports issued and disseminated by Allbirds; and (c) review of other publicly available
9 information concerning Allbirds.
10

11 **NATURE OF THE ACTION**

12 1. This is a class action on behalf of persons and entities that purchased or otherwise
13 acquired: (a) Allbirds Class A common stock pursuant and/or traceable to the registration
14 statement and prospectus (collectively, the "Registration Statement") issued in connection with
15 the Company's November 2021 initial public offering ("IPO" or the "Offering"); and/or (b)
16 Allbirds securities between November 4, 2021 and March 9, 2023, inclusive (the "Class Period").
17 Plaintiff pursues claims against Defendants under the Securities Act of 1933 ("Securities Act")
18 and the Securities Exchange Act of 1934 ("Exchange Act").
19

20 2. Allbirds is a footwear and apparel company. Footwear represents the majority of
21 the Company's revenue and brand. Its core products include lifestyle and performance shoes,
22 such as the Dasher and the Runner.
23

24 3. On November 4, 2021, the Company filed its prospectus on Form 424B4 with the
25 SEC, which forms part of the Registration Statement. In the IPO, the Company sold
26 approximately 16,850,799 shares of Class A common stock at a price of \$15.00 per share. The
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1 Company received proceeds of approximately \$237 million from the Offering, net of
2 underwriting discounts and commissions. The Company stated that it intended to use the net
3 proceeds from the Offering for “general corporate purposes, including working capital, operating
4 expenses and capital expenditures.”

5
6 4. In the Registration Statement and throughout the Class Period, Defendants made
7 materially false and/or misleading statements, as well as failed to disclose material adverse facts
8 about the Company’s business, operations, and prospects. Specifically, Defendants failed to
9 disclose to investors: (i) that Allbirds was overemphasizing products that extended beyond the
10 Company’s core offerings; (ii) that the Company’s non-core products had a narrower appeal and
11 were not resonating with customers as well as the Company’s core products; (iii) that Allbirds
12 was underinvesting in its core consumers’ favorite products to push the Company’s newer
13 products with narrower appeal; (iv) that underinvesting in Allbirds’ core products was negatively
14 impacting the Company’s sales; and (v) that, as a result of the foregoing, Defendants’ positive
15 statements about the Company’s business, operations, and prospects were materially misleading
16 and/or lacked a reasonable basis.

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18 5. On March 9, 2023, after the market closed, the Company issued a press release
19 announcing a fourth quarter 2022 net loss of \$24.9 million and a full year 2022 net loss of \$101.4
20 million. The Company also announced a full year 2022 adjusted EBITDA loss of \$60.4 million,
21 which was higher than the guidance target that estimated an adjusted EBITDA loss of \$42.5 million
22 to \$37.5 million. Allbirds also disclosed in the press release that, in response to these negative
23 results, it created a “strategic transformation plan to reignite growth, improve costs and capital
24 efficiency, and drive profitability.” The plan purportedly focused on four areas: reigniting product
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1 and brand, optimizing U.S. stores and slowing the pace of openings, evaluating transition of
2 international go-to-market strategy, and improving cost savings and capital efficiency.

3 6. Also on March 9, 2023, after the market closed, Allbirds announced that its Chief
4 Financial Officer (“CFO”), Michael Bufano (“Bufano”), was stepping down.

5 7. That same day the Company held a conference call with analysts to discuss its
6 fourth quarter 2022 results. On the call, Defendant Joseph Zwillinger (“Zwillinger”), the
7 Company’s Co-Chief Executive Officer (“CEO”), explained that Allbirds’ poor results were
8 driven in part by the fact that Allbirds “overemphasized products that extended beyond our core
9 DNA.” As a result, he explained. “some products and colors have had narrower appeal than
10 expected” and “[b]ecause we were spending significant time and resources on these new products
11 that did not resonate well, we underinvested in our core consumers’ favorite products.”
12

13 8. On this news, the Company’s stock price fell \$1.11, or 47%, to close at \$1.25 per
14 share on March 10, 2023, thereby injuring investors.

15 9. By the commencement of this action, the Company’s stock price had closed as
16 low as \$1.06 per share, a 92.9% decline from the Company’s \$15.00 per share IPO price.

17 10. As a result of Defendants’ wrongful acts and omissions, and the precipitous
18 decline in the market value of the Company’s securities, Plaintiff and other Class members have
19 suffered significant losses and damages.
20

21 **JURISDICTION AND VENUE**

22 11. The claims asserted herein arise under and pursuant to Sections 11 and 15 of the
23 Securities Act (15 U.S.C. §§ 77k and 77o), Sections 10(b) and 20(a) of the Exchange Act (15
24 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §
25 240.10b-5).
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12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Section 22 of the Securities Act (15 U.S.C. § 77v), and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are in this District.

14. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the U.S. mail, interstate telephone communications, and the facilities of a national securities exchange.

PARTIES

15. Plaintiff, as set forth in the accompanying Certification, incorporated by reference herein, purchased or otherwise acquired Allbirds common stock pursuant and/or traceable to the Registration Statement issued in connection with the Company's IPO and/or Allbirds securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

16. Defendant Allbirds is incorporated under the laws of Delaware with its principal executive offices located in San Francisco, California. Allbirds' shares trade on the NASDAQ stock market under the symbol "BIRD."

1 17. Defendant Zwilling was, at all relevant times, a Co-CEO and a Director of the
2 Company. Zwilling signed or authorized the signing of the Company's Registration Statement
3 filed with the SEC.

4 18. Defendant Timothy Brown ("Brown") was, at all relevant times, a Co-CEO of the
5 Company. Brown signed or authorized the signing of the Company's Registration Statement
6 filed with the SEC.

7 19. Defendant Bufano was, at all relevant times, the CFO of the Company. Bufano
8 signed or authorized the signing of the Company's Registration Statement filed with the SEC.

9 20. Defendants Zwilling, Brown, and Bufano (collectively, the "Individual
10 Defendants"), because of their positions with the Company, possessed the power and authority
11 to control the contents of the Company's reports to the SEC, press releases and presentations to
12 securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market.
13 The Individual Defendants were provided with copies of the Company's reports and press releases
14 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
15 opportunity to prevent their issuance or cause them to be corrected. Because of their positions
16 and access to material non-public information available to them, the Individual Defendants knew
17 that the adverse facts specified herein had not been disclosed to, and were being concealed from,
18 the public, and that the positive representations which were being made were then materially false
19 and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.
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21 21. Defendant Neil Blumenthal ("Blumenthal") was a Director of the Company and
22 signed or authorized the signing of the Company's Registration Statement filed with the SEC.

23 22. Defendant Dick Boyce ("Boyce") was a Director of the Company and signed or
24 authorized the signing of the Company's Registration Statement filed with the SEC.
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23. Defendant Mandy Fields (“Fields”) was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

24. Defendant Nancy Green (“Green”) was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

25. Defendant Dan Levitan (“Levitan”) was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

26. Defendant Emily Weiss (“Weiss”) was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

27. The Individual Defendants and Defendants Blumenthal, Boyce, Fields, Green, Levitan, and Weiss are collectively referred to hereinafter as the “Securities Act Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

28. Allbirds is a footwear and apparel company. Footwear represents the majority of the Company's revenue and brand. Its core products include lifestyle and performance shoes, such as the Dasher and the Runner.

29. On August 31, 2021, the Company filed its Registration Statement on Form S-1 with the SEC, which forms part of the Registration Statement. The Company subsequently made several amendments to the Form S-1.

30. On October 25, 2021, the Company filed its final amendment to the Registration Statement with the SEC on Form S-1/A, which forms part of the Registration Statement. The Registration Statement was declared effective on November 2, 2021.

31. On November 4, 2021, the Company filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the Company sold approximately 16,850,799 shares of Class A common stock at a price of \$15.00 per share. The Company received proceeds of approximately \$237 million from the Offering, net of underwriting discounts and commissions. The Company stated that it intended to use the net proceeds from the Offering for “general corporate purposes, including working capital, operating expenses and capital expenditures.”

**Materially False and Misleading Statements Issued in the
Registration Statement and Prospectus**

32. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

33. Under applicable SEC rules and regulations, the Registration Statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the Company’s continuing operations.

34. The Registration Statement¹ highlighted why the Company had been successful prior to the IPO. Among the reasons for its success, the Company listed a “deep connection with our community of customers”:

By making great products and telling the story of an inspirational, purpose-driven brand, ***we have formed a deep connection with our community of customers.*** We have sold our products to over four million customers since our founding. As of June 30, 2021, we had more than two million people on our email list and nearly one million followers on social media. Our high Net Promoter Score, which has consistently been 83 or higher since the first quarter of 2019 and was 86 for the first half of 2021, demonstrates our strong following and growing brand advocates who

¹ Unless otherwise stated, all emphasis in bold and italics hereinafter is added.

love Allbirds. *Approximately 53% of our net sales in 2020 came from repeat customers.* This is true globally, as our customers span 35 countries, and 24% of our net revenue in 2020 came from outside the United States. See the section titled “Market, Industry, and Other Data” for additional information regarding Net Promoter Score.

As a brand with a digitally-led vertical retail distribution strategy, we are able to own the customer experience, which allows us to use data to determine who our customers are, what is important to them, and what products are most relevant and when, allowing us to create a strong connection with our customers. We have learned that our customers live an active and curious lifestyle, care about health and well-being, prioritize quality over price, frequently purchase products online, live in urban center settings, and appreciate socially conscious brands. In addition to communicating more effectively with our customers, these insights allow us to meet customers’ needs through the creation of new products and enhancements to our existing line.

Further, to illustrate the importance of engaging our customer base, the average spend by a repeat customer in a given cohort is over 25% more in their second year as compared to what was spent in the first year, and the average spend by a repeat customer continues to increase each subsequent year.

35. The Registration Statement also discussed five strategies that will maintain the Company’s success. The strategies failed to state that the Company was shifting its focus toward new customers at the expense of its core customers.

36. The Registration Statement strategies also included deepening engagement with the Company’s community of customers, which also failed to state the shift in focus. The strategy stated, in relevant part:

By deepening our relationships with our repeat customers, we believe we are well-positioned to capture a greater share of the approximately seven pairs of shoes and 68 pieces of clothing that the average American bought in 2018 and realize substantial growth in our business. We believe there is continued opportunity to grow our closet share as we further expand our brand and product selection, as evidenced by the fact that approximately 80% of orders from repeat customers in the six-month period ended June 30, 2021 included a different item than in their first order and 26% of those orders were for multiple items.

37. In the Registration Statement and throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to

disclose to investors: (i) that Allbirds was overemphasizing products that extended beyond the Company's core offerings; (ii) that the Company's non-core products had a narrower appeal and were not resonating with customers as well as the Company's core products; (iii) that Allbirds was underinvesting in its core consumers' favorite products to push the Company's newer products with narrower appeal; (iv) that underinvesting in Allbirds' core products was negatively impacting the Company's sales; and (v) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

Materially False and Misleading Statements Issued During the Class Period

38. The Class Period begins on November 4, 2021. On that day, Allbirds' common stock began publicly trading pursuant to the Registration Statement, including the statements identified in ¶¶ 34-36.

39. On November 30, 2021, the Company issued a press release announcing its third quarter 2021 financial results. Defendant Zwilling also stated the following about the Company's performance but did not disclose that the strategic plan was at the expense of core customers:

"We are pleased to deliver strong third quarter performance, which reflects solid execution by our teams and robust global demand for the Allbirds brand," said Joey Zwilling, Co-Founder and Co-CEO. "Revenue was strong across channels and geographies, growing 33% year over year, with notable strength in U.S. physical retail. Importantly, we saw strong consumer response in the quarter to our new product innovation, including our new Perform Apparel line."

"We're at the forefront of a generational change in consumer values and purchase behaviors, led by our mission to make better things in a better way—which means we're aligning our purpose of reversing climate change with our product quality and financial outcomes. Looking ahead, we believe Allbirds is uniquely positioned in an exceptionally large and growing market. *As we continue to execute our strategic plan, we are focused on accelerating growth, creating value for our shareholders and building for a multi-decade journey.*"

1 40. On May 10, 2022, the Company issued a press release announcing its first quarter
2 2022 financial results. The press release announced a reduction to its financial targets but failed
3 to state that the Company had shifted its focus toward attracting new customers at the expense of
4 its core customers. Defendant Zwilling was quoted saying the following about the Company's
5 performance:
6

7 "We are pleased to deliver strong first quarter performance across our key financial
8 metrics, particularly against the backdrop of a volatile operating environment," said
9 Joey Zwilling, co-Founder and Co-CEO. "Tumult around the world since our last
10 earnings report, including Russia's invasion of Ukraine and China's COVID-19
11 restrictions, impacted the performance of our international business in Q1 and is
12 expected to persist for the remainder of 2022. These factors were more than offset
by excellent performance in our U.S. business, which delivered net revenue growth
of 35% in the first quarter. Net revenue growth for the total business again
accelerated on both a one- and two-year basis in the quarter, up 26% and 49%,
respectively."

13 "We believe our teams are continuing to execute well amidst the external headwinds
14 and we remain focused on driving the topline through our core growth pillars of
15 delivering product innovation, growing our store portfolio and expanding
16 internationally, with those growth pillars highlighted in 2022 by what we believe is
17 the most exciting new product roadmap in the history of the company. While we are
18 adopting a more conservative near-term outlook in light of the transitory external
headwinds affecting our international business, we expect to deliver strong full year
revenue growth of 21% to 24% in 2022. Importantly, we remain confident that our
digital-savvy, omni-channel operating model will support continued growth and
enable us to create meaningful value for our shareholders in the years ahead."

19 41. On August 8, 2022, the Company issued a press release reporting its second
20 quarter 2022 financial results. The press release announced a reduction in guidance targets but
21 failed to state that the Company had shifted its focus away from core customers. Defendant
22 Bufano was quoted saying the following but did not disclose that the Company's focus was at
23 the expense of core customers:
24

25 In this operating environment, we are focused on controlling what we can control
26 and have implemented a series of Simplification Initiatives focused on automating
27 and expanding our supply chain and streamlining our operating structure. These
28 Simplification Initiatives are expected to generate annualized SG&A expense
savings of \$13 million to \$15 million beginning in 2023 and significant cost of

1 revenue savings in future years. We will reinvest some of these savings into
 2 building brand momentum through product innovation, marketing, retail stores, and
 3 marquee third party partnerships. *We are confident that these investments in the*
 4 *customer, coupled with our Simplification Initiatives, will help us navigate this*
consumer slowdown and position us for accelerated profitable growth when the
 headwinds pass.

5 42. On November 8, 2022, the Company issued a press release announcing third
 6 quarter 2022 financial results. The Company announced that it was maintaining full year
 7 guidance targets but failed to state that it had shifted focus toward attracting new customers at
 8 the expense of its core customers. Defendant Zwillingler was quoted saying the following about
 9 the Company's performance, but he failed to state that the Company had shifted its focus toward
 10 attracting new customers:
 11

12 "We delivered a strong quarter in what remains a highly dynamic operating
 13 environment. I am proud that we exceeded our Q3 adjusted revenue and adjusted
 14 EBITDA guidance targets while also delivering on our sustainability goals," said
 15 Joey Zwillingler, Co-Founder and Co-CEO. "Looking ahead to year end and 2023,
 16 we continue to expect macro headwinds to persist but believe that our brand, our
 growth strategy, and simplification initiatives position us well to emerge strongly
 from this period. Thanks to the team's hard work I remain confident in our ability
 to continue to execute into the holiday season and next year."

17 "November also marks the one year anniversary of our IPO, a critical step in
 18 building Allbirds into a 100 year brand while setting a new industry standard for
 19 sustainable business for others to follow. We recently released our "Flight Status"
 20 sustainability report for 2021, which shows that we were able to reduce our average
 21 product carbon footprint by 12% while growing our net revenues by 27% in 2021.
 22 We remain on track to deliver on our goal to cut our already low per product carbon
 footprint in half by 2025 and achieve near zero by 2030, while also delivering on
 our Sustainability Principles & Objectives Framework commitments first
 enumerated in our S-1. I could not be more proud of what we have achieved and
 remain tremendously optimistic about the future."

23 43. The above statements identified in ¶¶ 38-42 were materially false and/or
 24 misleading, and failed to disclose material adverse facts about the Company's business,
 25 operations, and prospects. Specifically, Defendants failed to disclose to investors: (i) that
 26 Allbirds was overemphasizing products that extended beyond the Company's core offerings; (ii)
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1 that the Company's non-core products had a narrower appeal and were not resonating with
 2 customers as well as the Company's core products; (iii) that Allbirds was underinvesting in its
 3 core consumers' favorite products to push the Company's newer products with narrower appeal;
 4 (iv) that underinvesting in Allbirds' core products was negatively impacting the Company's
 5 sales; and (v) that, as a result of the foregoing, Defendants' positive statements about the
 6 Company's business, operations, and prospects were materially misleading and/or lacked a
 7 reasonable basis.
 8

9 The Truth Emerges

10 44. On March 9, 2023, after the market closed, Allbirds issued a press release
 11 announcing that Defendant Bufano was stepping down as the Company's CFO and that Annie
 12 Mitchell was taking his place, effective April 24, 2023.
 13

14 45. Also on March 9, 2023, after the market closed, Allbirds issued a press release
 15 reporting Fourth Quarter and Full Year 2022 financial results (the "4Q22 Press Release"), which
 16 revealed, among other things, a full year 2022 net loss of \$101.4 million. It contained the
 17 following financial highlights:

- 18 • Fourth quarter 2022 net revenue, which included \$1.5 million of revenue
 19 primarily associated with the previously announced discontinuation of certain
 20 first generation apparel, decreased 13% to \$84.2 million compared to fourth
 21 quarter 2021 and increased 6% compared to fourth quarter 2020.

22 * * *

- 23 • ***Full year 2022 net loss of \$101.4 million***, or \$.68 per basic and diluted share.
- 24 • ***Fourth quarter 2022 net loss of \$24.9 million***, or \$0.17 per basic and diluted
 25 share.
- 26 • ***Full year 2022 adjusted EBITDA loss of \$60.4 million.***

- **Fourth quarter 2022 adjusted EBITDA loss of \$12.5 million**, including a \$3.5 million loss primarily associated with the previously announced discontinuation of certain first-generation apparel.

(Footnotes omitted.)

46. In response to the disappointing results, the 4Q22 Press Release also announced a “strategic transformation to drive sustained and profitable growth.” The plan focuses on these areas:

- Reignite product and brand
 - Executing a highly-focused brand strategy that reconnects with core consumers.
- Optimize U.S. stores and slow pace of openings.
 - Driving traffic and conversion to our U.S. fleet and selectively expanding our third party wholesale channel.
- Evaluate transition of international go-to-market strategy
 - Evaluating potential distributor partners in certain international markets to grow internationally in a cost- and capital-efficient manner
- Improve cost savings and capital efficiency
 - Building upon and further accelerating 2022 cost and cash optimization initiatives to accelerate cost of revenue savings and SG&A savings, and improve cash optimization.

47. Also on March 9, 2023, after the market closed, the Company held an earnings call conference. Defendant Zwilling explained how the Company had fallen short and what decisions led to the poor financial results. Defendant Zwilling stated:

However, in this journey we also made some missteps. ***First, we overemphasized products that extended beyond our core DNA.*** And as a result, some products and colors have had narrower appeal than expected. ***Because we were spending significant time and resources on these new products that did not resonate well, we underinvested in our core consumers’ favorite products.*** Finally, we did not increase our brand awareness to the level that we anticipated.

In essence, over the past couple of years, we shifted our focus away from our core consumer and we must refocus sharply on this large and attract [sic] group. Taking a look at Q4 specifically this dynamic was exacerbated by the fact that the final weeks of December were exceptionally promotional and we did not sufficiently promote to meet consumers' expectations. As a result, Q4 was the first quarter of negative growth in our history. We are disappointed with these results. And we know that, as we look ahead the status quo is not enough.

48. On this news, the Company's stock price fell \$1.11, or 47%, to close at \$1.25 per share on March 10, 2023, thereby injuring investors.

49. By the commencement of this action, the Company's stock price had closed as low as \$1.06 per share, a 92.9% decline from the Company's \$15.00 per share IPO price.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Allbirds: (a) Class A common stock pursuant and/or traceable to the Company's false and/or misleading Registration Statement issued in connection with the Company's IPO; and/or (b) securities between November 4, 2021 and March 9, 2023, inclusive; and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

51. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. In the IPO, the Company sold approximately 16,850,799 shares of Class A common stock at a price of \$15.00 per share. Moreover, record owners and other members of the Class may be identified from records

1 maintained by Allbirds or its transfer agent and may be notified of the pendency of this action by
2 mail, using the form of notice similar to that customarily used in securities class actions.

3 52. Plaintiff's claims are typical of the claims of the members of the Class as all
4 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
5 federal law that is complained of herein.
6

7 53. Plaintiff will fairly and adequately protect the interests of the members of the
8 Class and has retained counsel competent and experienced in class and securities litigation.

9 54. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions solely affecting individual members of the Class. Among the
11 questions of law and fact common to the Class are:

- 12 (a) whether the federal securities laws were violated by Defendants' acts as alleged
13 herein;
14
15 (b) whether the Registration Statement, statements made by Defendants to the
16 investing public in connection with the Company's IPO, and statements made by
17 Defendants to the investing public during the Class Period omitted and/or
18 misrepresented material facts about the business, operations, and prospects of
19 Allbirds; and
20
21 (c) to what extent the members of the Class have sustained damages and the proper
22 measure of damages.

23 55. A class action is superior to all other available methods for the fair and efficient
24 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
25 damages suffered by individual Class members may be relatively small, the expense and burden of
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1 individual litigation makes it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action

3 56. The market for Allbirds' securities was open, well-developed, and efficient at all
4 relevant times. As a result of the materially false and/or misleading statements and/or failures to
5 disclose, Allbirds' securities traded at artificially inflated prices during the Class Period. On
6 November 18, 2021, the Company's share price closed at a Class Period high of \$26.76 per share.
7 Plaintiff and other members of the Class purchased or otherwise acquired the Company's
8 securities relying upon the integrity of the market price of Allbirds' securities and market
9 information relating to Allbirds, and have been damaged thereby.

11 57. During the Class Period, the artificial inflation of Allbirds' shares was caused by
12 the material misrepresentations and/or omissions particularized in this Complaint causing the
13 damages sustained by Plaintiff and other members of the Class. As described herein, during the
14 Class Period, Defendants made or caused to be made a series of materially false and/or
15 misleading statements about Allbirds' business, prospects, and operations. These material
16 misstatements and/or omissions created an unrealistically positive assessment of Allbirds and its
17 business, operations, and prospects, thus causing the price of the Company's securities to be
18 artificially inflated at all relevant times, and when disclosed, negatively affected the value of the
19 Company shares. Defendants' materially false and/or misleading statements during the Class
20 Period resulted in Plaintiff and other members of the Class purchasing the Company's securities
21 at such artificially inflated prices, and each of them has been damaged as a result.

24 58. At all relevant times, the market for Allbirds' securities was an efficient market
25 for the following reasons, among others:

1 (a) Allbirds shares met the requirements for listing, and were listed and actively
2 traded on the NASDAQ, a highly efficient and automated market;

3 (b) As a regulated issuer, Allbirds filed periodic public reports with the SEC and/or
4 the NASDAQ;

5 (c) Allbirds regularly communicated with public investors via established market
6 communication mechanisms, including through regular dissemination of press releases on the
7 national circuits of major newswire services and through other wide-ranging public disclosures,
8 such as communications with the financial press and other similar reporting services; and/or

9 (d) Allbirds was followed by securities analysts employed by brokerage firms who
10 wrote reports about the Company, and these reports were distributed to the sales force and certain
11 customers of their respective brokerage firms. Each of these reports was publicly available and
12 entered the public marketplace.
13

14
15 59. As a result of the foregoing, the market for Allbirds' securities promptly digested
16 current information regarding Allbirds from all publicly available sources and reflected such
17 information in Allbirds' share price. Under these circumstances, all purchasers of Allbirds'
18 securities during the Class Period suffered similar injury through their purchase of Allbirds'
19 securities at artificially inflated prices and a presumption of reliance applies.
20

21 60. A Class-wide presumption of reliance is also appropriate in this action under the
22 Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
23 because the Class's claims are, in large part, grounded on Defendants' material misstatements
24 and/or omissions. Because this action involves Defendants' failure to disclose material adverse
25 information regarding the Company's business operations and financial prospects—information
26 that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to
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1 recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable
2 investor might have considered them important in making investment decisions. Given the
3 importance of the Class Period material misstatements and omissions set forth above, that
4 requirement is satisfied here.

5 **UNDISCLOSED ADVERSE FACTS**

6
7 61. The market for Allbirds' securities was open, well-developed, and efficient at all
8 relevant times. As a result of these materially false and/or misleading statements, and/or failures
9 to disclose, Allbirds' securities traded at artificially inflated prices during the Class Period.
10 Plaintiff and other members of the Class purchased or otherwise acquired Allbirds' securities
11 relying upon the integrity of the market price of the Company's securities and market information
12 relating to Allbirds, and have been damaged thereby.

13
14 62. During the Class Period, Defendants materially misled the investing public,
15 thereby inflating the price of Allbirds' securities, by publicly issuing false and/or misleading
16 statements and/or omitting to disclose material facts necessary to make Defendants' statements,
17 as set forth herein, not false and/or misleading. The statements and omissions were materially
18 false and/or misleading because they failed to disclose material adverse information and/or
19 misrepresented the truth about Allbirds' business, operations, and prospects as alleged herein.

20
21 63. At all relevant times, the material misrepresentations and omissions particularized
22 in this Complaint directly or proximately caused or were a substantial contributing cause of the
23 damages sustained by Plaintiff and other members of the Class. As described herein, during the
24 Class Period, Defendants made or caused to be made a series of materially false and/or
25 misleading statements about Allbirds' financial well-being and prospects. These material
26 misstatements and/or omissions had the cause and effect of creating in the market an
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1 unrealistically positive assessment of the Company and its financial well-being and prospects,
2 thus causing the Company's securities to be overvalued and artificially inflated at all relevant
3 times. Defendants' materially false and/or misleading statements during the Class Period resulted
4 in Plaintiff and other members of the Class purchasing the Company's securities at artificially
5 inflated prices, thus causing the damages complained of herein when the truth was revealed.
6

7 **LOSS CAUSATION**

8 64. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
9 the economic loss suffered by Plaintiff and the Class.

10 65. During the Class Period, Plaintiff and the Class purchased Allbirds' securities at
11 artificially inflated prices and were damaged thereby. The price of the Company's securities
12 significantly declined when the misrepresentations made to the market, and/or the information
13 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
14 causing investors' losses.
15

16 **SCIENTER ALLEGATIONS**

17 66. As alleged herein, Defendants acted with scienter since Defendants knew that the
18 public documents and statements issued or disseminated in the name of the Company were
19 materially false and/or misleading; knew that such statements or documents would be issued or
20 disseminated to the investing public; and knowingly and substantially participated or acquiesced
21 in the issuance or dissemination of such statements or documents as primary violations of the
22 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by
23 virtue of their receipt of information reflecting the true facts regarding Allbirds, their control
24 over, and/or receipt and/or modification of Allbirds' allegedly materially misleading
25 misstatements and/or their associations with the Company which made them privy to confidential
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1 proprietary information concerning Allbirds, participated in the fraudulent scheme alleged
2 herein.

3 **NO SAFE HARBOR**

4 67. The statutory safe harbor provided for forward-looking statements under certain
5 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
6 The statements alleged to be false and misleading herein all relate to then-existing facts and
7 conditions. In addition, to the extent certain of the statements alleged to be false may be
8 characterized as forward looking, they were not identified as “forward-looking statements” when
9 made and there were no meaningful cautionary statements identifying important factors that
10 could cause actual results to differ materially from those in the purportedly forward-looking
11 statements. In the alternative, to the extent that the statutory safe harbor is determined to apply
12 to any forward-looking statements pleaded herein, Defendants are liable for those false forward-
13 looking statements because at the time each of those forward-looking statements was made, the
14 speaker had actual knowledge that the forward-looking statement was materially false or
15 misleading, and/or the forward-looking statement was authorized or approved by an executive
16 officer of Allbirds who knew that the statement was false when made.
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19 **COUNT I**

20 **(Violations of Section 11 of the Securities Act Against All Defendants)**

21 68. Plaintiff repeats and re-alleges each and every allegation contained above as if
22 fully set forth herein.
23

24 69. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §
25 77k, on behalf of the Class, against the Defendants.
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1 70. The Registration Statement for the IPO was inaccurate and misleading, contained
2 untrue statements of material facts, omitted to state other facts necessary to make the statements
3 made not misleading, and omitted to state material facts required to be stated therein.

4 71. Allbirds is the registrant for the IPO. The Defendants named herein were
5 responsible for the contents and dissemination of the Registration Statement.

6 72. As issuer of the shares, Allbirds is strictly liable to Plaintiff and the Class for the
7 misstatements and omissions.

8 73. None of the Defendants named herein made a reasonable investigation or
9 possessed reasonable grounds for the belief that the statements contained in the Registration
10 Statement were true and without omissions of any material facts and were not misleading.

11 74. By reasons of the conduct herein alleged, each Defendant violated, and/or
12 controlled a person who violated Section 11 of the Securities Act.

13 75. Plaintiff acquired Allbirds shares pursuant and/or traceable to the Registration
14 Statement for the IPO.

15 76. Plaintiff and the Class have sustained damages. The value of Allbirds Class
16 A common stock has declined substantially subsequent to and due to the Defendants' violations

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18
19 **COUNT II**

20 **(Violations of Section 15 of the Securities Act Against the Securities Act Individual**
21 **Defendants)**

22 77. Plaintiff repeats and re-alleges each and every allegation contained above as if
23 fully set forth herein.

24 78. This Count is asserted against the Individual Defendants and is based upon
25 Section 15 of the Securities Act.

79. The Individual Defendants, by virtue of their offices, directorship, and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Allbirds within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power and influence and exercised the same to cause Allbirds to engage in the acts described herein.

80. The Individual Defendants' positions made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

81. By virtue of the conduct alleged herein, the Individual Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

COUNT III

**(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder
Against Allbirds and the Individual Defendants)**

82. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

83. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Allbirds' securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

84. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to

1 maintain artificially high market prices for Allbirds' securities in violation of Section 10(b) of
2 the Exchange Act and Rule 10b-5 promulgated thereunder. Defendants are sued either as primary
3 participants in the wrongful and illegal conduct charged herein or as controlling persons as
4 alleged below.

5
6 85. Defendants, individually and in concert, directly and indirectly, by the use, means
7 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
8 continuous course of conduct to conceal adverse material information about Allbirds' financial
9 wellbeing and prospects, as specified herein.

10 86. Defendants employed devices, schemes and artifices to defraud, while in
11 possession of material adverse non-public information and engaged in acts, practices, and a
12 course of conduct as alleged herein in an effort to assure investors of Allbirds' value and
13 performance and continued substantial growth, which included the making of, or the participation
14 in the making of, untrue statements of material facts and/or omitting to state material facts
15 necessary in order to make the statements made about Allbirds and its business operations and
16 future prospects in light of the circumstances under which they were made, not misleading, as
17 set forth more particularly herein, and engaged in transactions, practices and a course of business
18 which operated as a fraud and deceit upon the purchasers of the Company's securities during the
19 Class Period.
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21
22 87. Each of the Individual Defendants' primary liability and controlling person
23 liability arises from the following facts: (i) the Individual Defendants were high-level executives
24 and/or directors at the Company during the Class Period and members of the Company's
25 management team or had control thereof; (ii) each of these defendants, by virtue of their
26 responsibilities and activities as a senior officer and/or director of the Company, was privy to and
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1 participated in the creation, development and reporting of the Company's internal budgets, plans,
2 projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and
3 familiarity with the other defendants and was advised of, and had access to, other members of
4 the Company's management team, internal reports and other data and information about the
5 Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants
6 was aware of the Company's dissemination of information to the investing public which they
7 knew and/or recklessly disregarded was materially false and misleading.
8

9 88. Defendants had actual knowledge of the misrepresentations and/or omissions of
10 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
11 ascertain and to disclose such facts, even though such facts were available to them. Such
12 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
13 for the purpose and effect of concealing Allbirds' financial well-being and prospects from the
14 investing public and supporting the artificially inflated price of its securities. As demonstrated
15 by Defendants' overstatements and/or misstatements of the Company's business, operations,
16 financial well-being, and prospects throughout the Class Period, Defendants, if they did not have
17 actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to
18 obtain such knowledge by deliberately refraining from taking those steps necessary to discover
19 whether those statements were false or misleading.
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22 89. As a result of the dissemination of the materially false and/or misleading
23 information and/or failure to disclose material facts, as set forth above, the market price of
24 Allbirds' securities was artificially inflated during the Class Period. In ignorance of the fact that
25 market prices of the Company's securities were artificially inflated, and relying directly or
26 indirectly on the false and misleading statements made by Defendants, or upon the integrity of
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1 the market in which the securities trade, and/or in the absence of material adverse information
2 that was known to or recklessly disregarded by Defendants, but not disclosed in public statements
3 by Defendants during the Class Period, Plaintiff and the other members of the Class acquired
4 Allbirds' securities during the Class Period at artificially high prices and were damaged thereby.

5 90. At the time of said misrepresentations and/or omissions, Plaintiff and other
6 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
7 and the other members of the Class and the marketplace known the truth regarding the problems
8 that Allbirds was experiencing, which were not disclosed by Defendants, Plaintiff and other
9 members of the Class would not have purchased or otherwise acquired their Allbirds securities,
10 or, if they had acquired such securities during the Class Period, they would not have done so at
11 the artificially inflated prices which they paid.
12

13 91. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange
14 Act and Rule 10b-5 promulgated thereunder.
15

16 92. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
17 the other members of the Class suffered damages in connection with their respective purchases
18 and sales of the Company's securities during the Class Period.
19

20 **COUNT IV**

21 **(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)**

22 93. Plaintiff repeats and re-alleges each and every allegation contained above as if
23 fully set forth herein.

24 94. The Individual Defendants acted as controlling persons of Allbirds within the
25 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
26 positions and their ownership and contractual rights, participation in, and/or awareness of the
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1 Company's operations and intimate knowledge of the false financial statements filed by the
2 Company with the SEC and disseminated to the investing public, the Individual Defendants had
3 the power to influence and control and did influence and control, directly or indirectly, the
4 decision-making of the Company, including the content and dissemination of the various
5 statements which Plaintiff contends are false and misleading. The Individual Defendants were
6 provided with or had unlimited access to copies of the Company's reports, press releases, public
7 filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after
8 these statements were issued and had the ability to prevent the issuance of the statements or cause
9 the statements to be corrected.
10

11 95. In particular, the Individual Defendants had direct and supervisory involvement
12 in the day-to-day operations of the Company and, therefore, had the power to control or influence
13 the particular transactions giving rise to the securities violations as alleged herein, and exercised
14 the same.
15

16 96. As set forth above, Allbirds and the Individual Defendants each violated Section
17 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by their acts and omissions
18 as alleged in this Complaint. By virtue of their position as controlling persons, the Individual
19 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate
20 result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered
21 damages in connection with their purchases of the Company's securities during the Class Period.
22

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for relief and judgment as follows:

25 A. Determining that this action is a proper class action under Rule 23 of the Federal
26 Rules of Civil Procedure;
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1 B. Awarding compensatory damages in favor of Plaintiff and the other Class
2 members against all defendants, jointly and severally, for all damages sustained as a result of
3 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

4 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
5 this action, including counsel fees and expert fees; and
6

7 D. Such other and further relief as the Court may deem just and proper.

8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiff hereby demands a trial by jury.

10 Dated: May 16, 2023

Respectfully submitted,

11 POMERANTZ LLP

12 /s/ Jennifer Pafiti

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